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SB 1885

RELATING TO LAND USE

Statement for the
Senate Committee on Economic Development
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by

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SB 1885 proposes certain amendments to HRS 205-4, HRS 205-16, HRS 205-16.1, and HRS 205-16.2 which deal with changes in the boundaries of land-use districts. This statement relates to the "Statewide land use guidance policies" that are proposed in the bill to replace the present "Interim land use guidance policy" in HRS 205-16.1. The statement does not reflect an institutional position of the University.

General Comments

We have three general comments on the policies.

First, a single action may require change in a land-use district boundary, a special management area permit, and a number of other permits and may require an EIS. No priority is established by statute among some of the approvals necessary, for example, the SMA permits and land-use district boundary changes. The West Beach development of Oahu is in the courts because State law does not indicate the order in which approvals must be received. The deficiency should be rectified.

Second, the land use guidance policies bill does not indicate what findings of fact and conclusions of law must be reached to justify a land use district boundary amendment. Since the Legislature has already agreed that the State CZM law should be legally binding on the Land Use Commission, a new policy should be added to S.B. 1885 stating that in cases involving the coastal zone management area, the Commission's findings of facts and conclusions of law should specifically address all of the policies and guidelines in Chapter 205A which are legally binding on all public agencies.

Third, the effect of the land use guidance policies, as drafted, is to place on the Land Use Commission the burden of developing its own land use policy for the State. That policy, no doubt, will emerge over time, according to how the Commission interprets the guidance policies embodied in this law. The law should be made as explicit as possible in order that the Commission be accountable to the public.

Our comments on specific proposed policies are as follows:

Urban District Policies

Policy (b) (1) (p. 10, ls. 3-10)

Policy (1) would make consistency with "official ten-year projections" a criterion for reclassifying land to the urban district. It is not clear what projections are referred to. Are they population projections, economic projections, or projections of some other type? What constitutes "official" status? Is it adoption by the counties, the state, or the federal government; and is it adoption by an agency in the executive branch or approval by the legislative branch.

Even if the intent were clarified, there would be problems with the concept.

First, projections are conventionally simply extrapolations of past trends, not taking into account changes in conditions that will result in changes in trends. Simple statistical projections are not a sound basis for Hawaii's urbanization policy.

Second, population and economic projections are generally made on an aggregate basis, for example for a county, and would provide no guidance to differential urbanization within a county.

Policy (1) will require redrafting and probably rethinking.

Policy (b) (2) (p. 10, ls. 11-18)

Policy (2) appears to place the burden of proof on the public sector to demonstrate that the proposed urban development can be accommodated. A stricter test would be to compare the impacts of a proposed development with additional services and facilities which are programmed (i.e., in capital and operating budgets) rather than those which "can be provided" by the public sector.

The thrust of this section implies that urban development will be accommodated where it occurs. An alternative approach would specify that urban growth shall occur only where service capacities are sufficient to determine that service levels do not fall below accepted standards. Demonstrated capacity should precede urbanization; this is frequently not the case. Hawaii's land use law provides an unusual opportunity to manage the State's lands in an efficient manner. This section could be strengthened by requiring more stringent tests of efficiency in the consideration of urbanization proposals.

Policy (b) (3) (p. 10, l. 19- p. 11, l. 4)

Policy (3) is intended to promote compact urban development. The principal difficulty is in the term "self-contained urban center." The term "self-contained" requires definition. In the strictest sense, no community in Hawaii could be said to be self-contained. And certainly, a community like Mililani Town would not be approvable under this section--if "self-contained" is strictly construed--because of the lack of that community's employment base. On the other hand, scattered resorts might be considered "self-contained urban centers".

This policy is well intended, but needs to be more specific to be meaningful.

Policy (b) (4) and (5)

The use of the term "preference" in policies (4) and (5) (p. 11, ls. 5 & 14) is meaningless in the context of decision-making under the land use law. Using that term would suggest that applications for reclassification are somehow ranked, where in fact they are considered on a case-by-case basis. The longer term "preference may be given" further reduces the clarity of what is intended.

Policy (b) (6) (p. 11, l. 16 - p. 12, l. 4)

The use of the term preference in policy (6) also is meaningless. If the content of the policy is to assure the provision of housing for certain income groups, such provision could simply be stated as a requirement.

Agricultural District PoliciesPolicies (c) (1) and (2)

The qualification "insofar as practicable" (p. 12, ls. 7 & 17) renders these policies virtually meaningless. If a person paid an inflated value for good agricultural land in the hope of urbanizing it, can a demonstration that it is impracticable for him to profitably farm that land be the basis for its reclassification to urban? Such has been the case in the past. This section should be tightened by the use of more specific criteria.

Policy (c) (4)

The use of the term "preference" in the policy (p. 13, l. 6) is meaningless for the same reasons as in the case of Urban Policies (4) and (5).

Rural District PoliciesPolicy (d) (3) (p. 15, l. 20 - p. 16, l. 8)

The same problems apply to this policy as apply to urban policy (b) (2).

Conservation District PoliciesPolicy (e) (2) (p. 13, l. 19 - p. 14, l. 17)

The criteria indicated in policy (2) are appropriately given high weight in determining that land should be retained in or transferred to the conservation district. However, the use of the word preference (p. 13, l. 19) again implies choice among several simultaneously considered proposals for transfers, whereas boundary changes are generally determined on a piecemeal basis.

Reclassification PoliciesPolicy (f) (1) (p. 16, ls. 12-17)

We note that policy (f) (1) calls for consideration of the cumulative impacts of a boundary change before the decision is made to adopt it. A recent Environmental Center report on the EIS system (Env. Ctr. Report SR:0019) suggests the possibility that, subject to some qualifications, a documented assessment of the total impact of any comprehensive plan or land-use scheme might reduce somewhat the needs for EIS's and for the extent of EIS's still needed. We call attention to the recommendation in the report for a special study of this possibility.

Policy (f) (4) (p. 6-11)

We are pleased that the environmental implications of land-use-district boundary changes receive attention in policy (f) (4). From the study of the EIS system, the Environmental Center has concluded that EIS's should be required for proposals to delete land from the conservation district or prime agricultural land from the agricultural district. We have recommended that the State EIS Act be amended to cover such boundary changes. However, we do not believe that mere significance of the environmental impacts of boundary changes should in all cases preclude the changes. A change in a land-use boundary should reflect the overall, long-term welfare of the public; and if economic or social benefits (in the long term) would outweigh the environmental detriments; even significant environmental detriments should not be a bar to the change.